

Long TT DRAFT

Litigation Referral Pursuant to Section 3008 of RCRA  
U.S. v Central Steel Drum, Inc.

William J. Muszinski, P.E.  
Acting Regional Administrator

*Very Rough*

Attached please find a litigation referral package prepared by my staff requesting the filing of a civil action in the District of New Jersey pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) against Central Steel Drum, Inc. This referral also recommends suing Central Steel Drum, Inc. for violation of a Consent Agreement and Consent Order issued to the company on November 25, 1983 in settlement of a RCRA Reg. II administrative Complaint issued on March 24, 1983 by ~~Region II~~ *Reg. II* ~~pursuant to Section 3008 of RCRA~~ *amended* ~~EPA Region II made a Motion to~~ ~~Amend the Complaint on May 22, 1983 which was granted on June 13, 1983.~~

*Skd*

Pursuant to the Consent Agreement and Consent Order, the company was obliged to comply with the terms of that Order which were to comply with all interim status requirements contained in 40 C.F.R. Part 265; to not accept for processing drums containing acute hazardous waste, or drums containing more than one inch of any other hazardous waste; to ensure that manifests accompanying hazardous waste are complete; to file exception reports as required by law; to complete and submit to EPA Part A of a hazardous waste permit application; to not treat hazardous waste in its sludge incinerator unless it submitted all required hazardous waste permit applications and unless it is in compliance with requirements for treatment, storage and disposal of hazardous waste; to fully develop and implement a program approved by NJDEP to identify those portions of CSD property contaminated with hazardous waste; to provide NJDEP a report containing its findings and proposing a remediation program and to implement that program as required by DEP. These steps have not been taken by Central Steel Drum, Inc., thus the company is in violation of the Consent Order.

*not a*

*see*

In accordance with the Consent Order, a consultant prepared and revised a sampling and testing plan which was verbally approved by NJDEP. In November 1984, the company implemented that plan, the results of which indicated the site was contaminated by hazardous waste. *material*.

NJDEP then suggested repairs of wells and further sampling to determine the extent and flow of the contamination. There is no record of the company submitting additional plans for sampling or remediation. In addition, the company failed to take all other steps to comply with the Consent Agreement and Consent Order.

We recommend immediate initiation of a lawsuit against Central Steel Drum, Inc. to ensure its compliance with ~~hazardous waste~~ *the Consent* regulations and to ensure that proper remedial action is taken to *Agreement* correct contamination of the site.

A Referral Data Sheet, providing additional details, concerning this referral, is attached.

Attachments.

cc: Associate Enforcement Counsel for Waste

Director, OWPE

Jim Sullivan

Chief EESLNSD

# I. SYNOPSIS OF CASE

This report proposes the filing of a civil action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) against Central Steel Drum, Inc. ("CSD") for violations of hazardous waste regulations.

This referral also recommends suing CSD, pursuant to Section 3008(c) for violations of a Final Consent Agreement and Consent Order (CA/CO), issued to the company on November 24, 1983 in settlement of an administrative Complaint issued by EPA, Region II in March of 1982.

CSD operates a drum reconditioning plant. On March 12, 1981, Central Steel Drum notified EPA that it was a hazardous waste generator, disposing of its hazardous waste in less than 90 days through the manifest system. In that letter, Central Steel Drum, Inc. denied being a treatment, storage or disposal facility ("TSD"). EPA issued an EPA id number and acknowledged the notification.

On March 24, 1982, pursuant to Section 3008 of RCRA, EPA Region II issued Central Steel Drum an Administrative Complaint. The Complaint, based on December 7, and 28, 1981 EPA inspections, alleged that CSD was operating a facility used for generation, treatment, storage and disposal of hazardous waste without having submitted part A of a hazardous waste permit application pursuant to 40 C.F.R. § 122.22 and was therefore operating without a hazardous waste permit and without interim status.

In that Complaint, EPA alleged that the company was generating, treating, storing and disposing of hazardous waste. The EPA Complaint also alleged various violations of the regulations promulgated pursuant to RCRA. CSD was alleged to be in violation of ✓ 40 C.F.R. Part 262 which sets standards for generators of hazardous waste and 40 C.F.R. Part 265 which sets standards for treatment, storage and disposal facilities operating under interim status or, as in this case, without a permit.

In specific, CSD was alleged to be in violation of the generator requirements which apply to general standards as well as manifest, recordkeeping and reporting requirements. In addition, CSD was alleged to be in violation of the "interim status" standards for owners and operators of hazardous waste treatment, storage and disposal facilities (TSDs) which apply to general facility standards, preparedness and prevention, use and management of containers, waste piles, incinerators and thermal treatment.

On June 13, 1983, the administrative court granted EPA's Motion to Amend which alleged that CSD had not provided financial assurance, had not established liability insurance, was not minimizing the



possibility of explosion or unplanned releases of hazardous waste and was not storing hazardous waste in closed containers.

Pursuant to the Consent Agreement and Consent Order issued on November 24, 1983, a consultant prepared and revised a sampling and testing plan which, pursuant to the Consent Agreement and Consent Order, NJDEP verbally approved for the purpose of identification of possible hazardous waste. The plan was never approved in writing. NJDEP did not approve of the plan for the purpose of remediation.

In accordance with its sampling and testing plan, CSD installed monitoring wells in the spring of 1984. In November of 1984, at the request of CSD's counsel, NJDEP enforcement staff watched the company as it sampled. The sampling results indicated ~~the site has been contaminated by hazardous material.~~ <sup>hazardous waste contamination.</sup> Further sampling was suggested to verify the previous results and to determine the extent and flow of the contamination. Neither plans for further sampling, nor further plans for remediation were submitted.

In addition, the company failed to take all other steps to comply with the Consent Agreement and Consent Order. On June 6, 1988, EPA took samples throughout the CSD facility. The results of the sampling indicated the presence of hazardous <sup>material</sup> waste and PCBs. ~~TP CSD has violated the November 24, 1983~~ <sup>TP</sup> ~~Consent Agreement and~~ <sup>is therefore in violation of both the</sup> Consent Order and the regulations promulgated pursuant to RCRA and ~~the Toxic Substance Control Act ("TSCA").~~ <sup>It has also been in violation of the</sup>

On August - 1989, EPA inspected the facility and found the pile which had been found to have contained PCBs in 1988 had been removed.

HOC's?

update the list of PCBs

## II. STATUTORY BASES OF REFERRAL

The Resource Conservation and Recovery Act ("RCRA") enacted in 1976 amended the Solid Waste Disposal Act ("SWDA"). SWDA and Subtitle C of RCRA authorized "cradle to the grave" regulation of hazardous waste. These Acts were later amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). The federal regulations, promulgated pursuant to these Acts became effective on November 19, 1980, are found at 40 C.F.R. 260 through 265 (published at 45 Fed. Reg. 33,063 et seq., May 19, 1980 and as subsequently amended).

40 C.F.R. Part 260 sets forth the general requirements for the hazardous waste management system. 40 C.F.R. Part 261 specifies the "Identification and Listing of Hazardous Waste." 40 C.F.R. Part 262 sets forth the "Standards Applicable to Generators of Hazardous Waste." 40 C.F.R. Part 264 sets forth the "Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities." 40 C.F.R. Part 265 sets for "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities."

Under RCRA, the hazardous waste management program is initially administered by the Administrator of EPA. Pursuant to section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a State to administer the state program in lieu of the federal program if the Administrator deems the state program to be equivalent.

New Jersey has been authorized to carry out all aspects of the federal program with the exception of those aspects resulting from the passage of HSWA. The Administrator authorized the State of New Jersey's pre HSWA program on February 2, 1983 (48 Fed. Reg. 4661), April 6, 1984 (49 Fed. Reg. 13,697) and February 21, 1985 (5020).

The New Jersey Solid Waste Management Act, N.J. Stat. Ann. 13:1 E-1 et seq (West 1985) and the New Jersey Solid and Hazardous Waste Rules and Regulations, N.J.A.C. 7:26-1.1 et seq., have become, through the Administrator's authorization, requirements of RCRA. The state program is federally enforceable under section 3008 of RCRA, 42 U.S.C. § 3938. Section 3008(a) of RCRA, 42 U.S.C. § 3938 (a) reads as follows:

Sec. 3008(a) Compliance Order. -- (1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subtitle, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subtitle where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 3006, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

Venue is proper in the district of New Jersey pursuant to 28 U.S.C. § 1391(b),(c) because the claims arose and the Defendant<sup>s</sup> have done business in this judicial district, and

pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a) because the violations of RCRA complained of occurred in this judicial district.

proof? Central Steel Drum, Inc. is a corporation organized and existing under the laws of the State of New Jersey. CSD is a "person" within the meaning of section 1004(15) of ~~the~~ RCRA, 42 U.S.C. § 6903(15). <sup>HP</sup> Notice of the commencement of the prior Administrative Complaint was given to the State of New Jersey and notice of the commencement of this action will be given to the State of New Jersey in accordance with section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(c) of RCRA, 42 U.S.C. 3938(c), applies to the violation of Compliance Orders and reads as follows:

(c) VIOLATION OF COMPLIANCE ORDERS.-- If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether by the Administrator or the State).

In March of 1983, when the Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing was issued Central Steel Drum, Inc., the New Jersey Hazardous Waste regulations had not yet been authorized, therefore, the federal requirements were applicable.

On March 12, 1981, Central Steel Drum informed EPA Region II that it was a generator of hazardous waste. ~~The~~ Administrative Complaint, ~~and~~ later Amendments to the Complaint alleged violations of

(skt)

40 C.F.R. Part 262 ("Standards Applicable to Generators of Hazardous Waste"), and 40 C.F.R. Part 265 ("Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities"). N.J.A.C. 7:26 - 7 through 11 contain their equivalent or more stringent State program standards. The mandatory termination of interim status at 42 U.S.C. § 6925(e) and (3) and the permitting standards referred to at 42 U.S.C. § 6925(i) are inapplicable since the Central Steel Drum facility does not have interim status and does not qualify for authorization to operate.

The Consent Agreement and Consent Order issued in settlement of the Administrative Complaint required Central Steel Drum to comply with all interim status requirements contained in 40 C.F.R. Part 265; to not accept for processing drums containing acute hazardous waste, or drums containing more than one inch of any hazardous waste; to ensure that manifests accompanying hazardous waste are complete; to file exception reports as required by law; to complete and submit, to EPA, Part A of a hazardous waste permit application; to not treat hazardous waste in its sludge incinerator unless it submitted all required hazardous waste permit applications and unless it is in compliance with requirements for treatment storage and disposal of hazardous waste; to fully develop and implement a program approved by NJDEP to identify those portions of CSD property contaminated with hazardous waste; to provide NJDEP a report containing its findings and proposing a remediation program and to implement that program as required by NJDEP. These steps have not been taken by Central Steel Drum, Inc., thus

the company is in violation of the Consent Order.

Based on recent sampling results, Central Steel Drum, Inc., EPA now alleges CSD to have disposed of PCBs in violation of section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615. Section 6(e) of TSCA, 15 U.S.C. § 2605(e) authorizes the promulgation of rules and regulations governing the manufacture, storage and disposal of PCBs. These regulations are codified at 40 C.F.R. Part 761.

### III. DESCRIPTION OF DEFENDANTS

CSD was incorporated in 1966 under the laws of New Jersey. The company operates a drum reconditioning plant. Prior to this use the site was used by a pigment manufacturer for inks. The facility has been a drum reconditioning site for no less than thirty years. It is located in a highly industrialized area known as Port Newark and is surrounded by a variety of other processing, manufacturing and storage facilities.

CSD receives used open and closed top 55 gallon drums from various sources and reconditions them for reuse. <sup>Historically, as well as presently, some of these</sup> The end products of the reconditioning process are all open top drums (drums which have <sup>removable</sup> lids).

In the initial phase of the reconditioning process the two types of drums are separated. The tops of the drums without lids are cut and the lids of the open top drums are removed. The two types of drums are then placed on a conveyor belt. The drums are

drums contained over 1" of hazardous waste.



then turned upside down and moved through a drum incinerator to remove residuals and paint finishes. This incineration takes place at temperatures of approximately 2,000° F.

After incineration, the solid residue generated is accumulated by a scraper belt, and placed into an open storage tank. Any sludge not removed by the scrapers is removed by hand. The puddle in this area is one of the large<sup>est</sup> of the puddles which appears throughout the facility. <sup>I dealy</sup> When the tank is full, the sludge is placed in drums or rolloffs. <sup>however, much of the waste accumulated in the tank overflows onto the surrounding property and seeps into the ground.</sup> The rolloffs containing sludge are stored near a fence on the east side of the facility.

Approximately nine years ago, CSD installed a sludge burner to reduce the sludge to an ash. The bin and any drum or rolloff containing sludge are taken to this burner and incinerated at temperatures of approximately 2800° F, for approximately eight hours. The resultant ash is scraped out by hand and stored in open roll-off containers, to be removed off-site. The ash blows throughout the site. The results of a recent sampling indicate the sludge and the ash are hazardous. ~~waste~~

After the drums are incinerated they are sand blasted to remove any remaining paint or other residuals. After being ~~and being~~ sandblasted, the drums are repainted, topped with new lids and sold for reuse. The sand used in this process does not contain hazardous material at concentrations great enough to be considered hazardous. Bag houses store the sand used in the process. A waste pile of unknown material is located near the bag houses. The waste pile



*EPA inspectors noted in their 1981 and 1989 inspections of the site that many drums such as formerly contained drums were being processed on site*

*was*  
 has been recently tested, and the results indicated that the pile of PCB contaminated at a rate of 280 ppm. *The pile was removed prior to a 1989 inspection but further investigation would be advisable to determine if removal was complete.*  
 The company processes approximately three thousand drums

a day. Not all drums are processed the same day as certain grade drums are in higher demand than others. In 1981, it was estimated that of the incoming drums 30% formerly contained material from the paint industry, 30-40% formerly contained materials from the food industry and the remaining 30-40% formerly contained varying miscellaneous residues such as adhesives, inks and sandy material.

During a recent 1988 New Jersey Department of Environmental Protection inspection, an agent for CSD claimed the company was presently

reconditioning drums which formerly contained "banana puree." *EPA inspectors at the site in 1988 and 1989 indicated drums with flammables and other hazardous wastes were on site as well as drums which formerly contained such material.*  
 CSD has stated that it only accepts "empty" drums which are

defined at 40 C.F.R. 261.7 and N.J.A.C. 7:26-8.4 as drums

which contain less than 2.5 cm. (one inch) of hazardous material.

Prior to the 1983 Consent Agreement and Consent Order, EPA inspectors

found full and partially full drums were being received by the facility. *1988 and 1989 drums containing greater than 1 inch of hazardous waste collected at one location.* During a recent inspection, *The list of facilities which contributed drums were found.* The company stated that it had accepted them by mistake and was going to return them. *No manifests for these drums were provided and the drums were not labeled as to accumulation.*

#### IV. DESCRIPTION OF VIOLATIONS

Central Steel Drum, Inc. is in violation of the Administrative CA/CO issued in November of 1983 and is in present violation of TSCA, RCRA and the New Jersey Solid Waste regulations.

*of these drums*  
 not keep records or manifest these drums,  
*because CSD has not complied with its record keeping regulations, EPA has no way of knowing if CSD has stored these drums for over 90 days*

*variation dates so*

*because CSD has not complied with its record keeping regulations*

*① To this collection included generators of hazardous waste as defined by RCRA.*

✓ A. Violation of TSCA

Pursuant to section 6(e) of TSCA, 15 U.S.C. § 2605(e) regulations were promulgated which govern the manufacture, distribution and disposal of PCBs. These regulations are codified at 40 C.F.R. § 761. In accordance with 40 C.F.R. § 761.60(a)(4), any non-<sup>liquid</sup> equal PCBs at <sup>at concentrations</sup> concentrations in the form of contaminated <sup>soil</sup> soil or other debris greater than 50 ppm must be disposed of in an incinerator or a chemical waste landfill. Sampling results have indicated Central Steel Drum, Inc. has allowed the deposit, discharge and disposal of material containing PCBs in excess of 50 ppm on the ground, in a pile, near the baghouses on the facility.

one extra space B. Violations of the Administrative Consent Agreement and Consent Order.

1. Before the issuance of the administrative Complaint, CSD, Inc. had informed EPA Region II that it generated hazardous waste. Generators of hazardous waste are regulated under the requirements set forth at 40 C.F.R. Part 262 entitled "Standards For the Generators of Hazardous Waste." Under 40 C.F.R. Part 262 pursuant to 40 C.F.R. § 122.22(a) and (c) now also pursuant to N.J.A.C. 7:26-12.3, a generator is required to submit a Part A of a hazardous waste permit application. In addition, paragraph 4 of the Order (CA/CO), settling the administrative Complaint, required CSD to submit such a Part A application.

*temporarily*  
 If CSD is storing drums of hazardous waste ~~it is~~ a storage facility which is subject to RCRA and application and therefore is in violation of 40 C.F.R. 122.22 and the rules promulgated according to the Act, 42 U.S.C. 3010 (a), 40 C.F.R. § 265.1 (b).

CSD, Inc. had not and still has not submitted a Part A application, and therefore is in violation of 40 C.F.R. 122.22 and paragraph 4 of the Consent Order issued on November 24, 1983. ~~10~~

2. Pursuant to paragraph 2 of the November 24, 1983 Consent Agreement, CSD, Inc. was required to ensure ~~Cons~~ ~~on~~

that all manifests accompanying the shipment of hazardous waste from the Facility contain all the information required by 40 C.F.R.

✓ § 262.21. Drums of hazardous waste were seen on site upon 2 two inspections. Company personnel indicated these drums were shipped back to their prior owner, yet no manifests were on record indicating any one thereof. CSD has been shipping hazardous waste material without the information required also by N.J.A.C. 7:26-7.3. CSD is therefore ~~agreement and~~

✓ in violation of paragraph 2 of the Consent Order.

3. Pursuant to paragraphs 5 and 6 of the Consent Order, CSD was required to comply with all ~~(including the financial requirements)~~

*#5 to all manifest*  
 applicable interim status ~~standing~~ <sup>ards</sup> for the equivalent New Jersey regulations contained in 40 C.F.R. Part 265, N.J.A.C. 7:26-9.1 through ~~(now codified at)~~ <sup>(S) 7:26-</sup> 9.69. CSD has not complied with the

~~applicable~~ interim status standards as described in the present violations subsection of the <sup>is</sup> section. CSD is therefore in violation of paragraph 5 and 6 of the Consent ~~Agreement and~~ Order.

4. Pursuant to paragraph 7, CSD was required not to treat hazardous waste in the sludge ~~generator~~ <sup>incinerator</sup> unless CSD had submitted all required hazardous waste permit applications and was in compliance with all applicable requirements for treatment, storage or disposal

of hazardous waste. CSD has not submitted all required permit applications and has not complied with all applicable requirements as described in the present violations subsection of this section. CSD is therefore in violation of paragraph 7 of the Consent Order.

- ✓ 5. Pursuant to paragraph 8 of the Consent Order, CSD was  
 ✓ required to "develop and implement a program, approved by the New  
 ✓ Jersey Department of Environmental Protection ("NJDEP"), to identify  
 those portions of its property "contaminated with hazardous waste"  
 and to provide NJDEP with a report containing its findings and  
 ✓ proposing a remediation program and then to implement the program  
 required by NJDEP to decontaminate, control, neutralize and/or  
 remove any contamination identified through the sampling and testing.  
 CSD provided NJDEP with a sampling plan and NJDEP watched as CSD  
 implemented the plan. Two of the wells were not in proper repair  
 at the time of the sampling. The samples which were taken indicated  
 the presence of hazardous waste. Further sampling was not done and  
 a remediation plan was not proposed. CSD is therefore in violation  
 ✓ of paragraph 8 of the Consent Order.

#### V. ENFORCEMENT HISTORY

This section sets forth the factual history of this  
 referral. Where appropriate, relevant documents are referred to  
 ✓ and appended hereto, as Attachments.

✓ 1979-1981

NJDEP investigated site and issues a NOV on  
 March 28, 1980.

✓

1

December 15, 1980 Attorney for CSD writes, stating "we don't handle chemical waste." Indicates they're preparing response to NOV.

✓ March 12, 1981 CSD writes to EPA indicating it is a generator of hazardous waste, but denies it is a TGS.

November 9, 1981 NJDEP transmits case to EPA describing site as 5-10 acres "virtually covered with pools of oil and various chemicals....filled marsh....oil and chemicals observed flowing into ditches and wetlands...estimate tens of thousands of drums many of which are leaking...incinerator was decrepit and had no scrubber system.

December 7, 1981 Angela Morales of EPA-Region II's Edison office conducted a hazardous waste inspection and finds lack of compliance with hazardous waste regulations.

December 28, 1981 NJDEP and EPA inspection occurred while heavy drums were being received by CSD. (Heavy drums are those containing over 1" of hazardous waste).

February 3, 1982 NJDEP inspection occurred in which sampling of sludge occurred.

February 18, 1982 Results of sludge sampling indicating leas present 2.8 parts per \_\_\_\_\_

✓ February 19, 1982 Transmittal of draft ~~complaind~~ to NJDEP for review.

February 25, 1982 Memo from Angela Morales to W. Sawyer. The results from the E.P. Tox analysis indicated lead ~~above~~ limitations, at 6.8X parts ~~per ml~~, which indicates the Facility generates hazardous waste. They're waiting for results of the sludge sampling.



March 3, 1982

Dotoli, CSD's attorney writes to NJDEP, now stating CSD is not a generator, that they just "recondition empty drums" and "Not subject to your bureau's reporting requirements."

✓

✓ March 24, 1982

Complaint issued <sup>by</sup> EPA Region II <sup>to CSD</sup> based on December 7 and 28, 1981 inspections <sup>^</sup>

April 2, 1982

Mike DeBonis of NJDEP writes to CSD that he concurs on "empty drum" interpretation.

May 18, 1982

Dotoli, attorney for CSD, writes to NJDEP in response to a prior request. CSD has approximately 50,000 empty open drums, 20,000 closed head drums. Dotoli indicates that CSD's contractor and NJDEP representative Brown have had a preliminary meeting to determine subsurface sampling locations and procedures.

✓ June 1, 1982

At this inspection the company indicated it was operating a landfill in the rear portion of the facility for ash and that it was filling potholes around the facility with the ash. The inspector noted evidence of partially full and full drums, spills and poor housekeeping.

✓ June 17, 1982

First informal settlement conference between CSD and EPA. <sup>attorney for EPA,</sup> Sawyer notes site used to be a Newark dump.

June 24, 1982

Inspection indicating ash stored in an uncovered rolloff and that contaminated water was used for cooling drums <sup>and</sup> was stored near the incinerator and then disposed of on-site. <sup>^</sup>

✓

✓

✓ June 30, 1982

AGES, the CSD contractor, writes to Brown for the response prior to drilling <sup>monitoring well.</sup>

July 17, 1982

Lab analysis results of soil sampling taken February 3, 1982 is sent to EPA and indicates significant levels of solvents and marginal levels of PCBs. [ck may be NJDEP]

July 26, 1982<sup>3</sup>

Draft Agreements and modifications are sent between EPA and CSD. CSD continues to deny it generates hazardous waste.

next pag

August 13, 1982

NJ Division of Criminal Justice writes to EPA and DEP indicating in view of pending proceedings they've decided not to pursue criminal proceedings.

August 25, 1982

EPA submits redraft of Consent Agreement to \_\_\_\_\_, Cover Letter discusses NJ involvement in groundwater monitoring activities.

September 25, 1982

Fill In Later

November 19, 1982

CSD contractor contacts NJDEP through Brown asking for confirmation of approval in writing so they can proceed.

December 2, 1982

EPA attorney writes to NJDEP enforcement Division Director indicating NJDEP has asked to take the lead in groundwater monitoring and has been involved in taking the lead in such activity to date.

February 1983

NJDEP inspections indicating little change in conditions.

February 2, 1983

NJDEP inspection report indicated inspector's belief that EPA returned this case in December 1982 for enforcement by the State, also indicates discovery of 40 - 50 full drums. *The report*

May 4, 1983

Sampling results from April 17 sampling indicating \_\_\_\_\_.

May 13, 1982

Dotoli expresses disappointment in EPA's positions. He again reiterates that CSD is not a generator and therefore no closure plan is required.



✓ May 27, 1983

EPA moves to amend its Complaint.

June 6, 1983

CSD moves in opposition to EPA's Motion to Amend, alleging bad faith.

June 13, 1983

EPA's Motion to Amend is granted, Judge remarks there is no bad faith on the part of EPA.

Insert → July 26 (from other pg)  
January 3, 1984

Gashlin, NJDEP's inspector on this site to date writes a memo in response to Epstein's December 28, 1983 memo (not located) indicating there is no reason not to proceed with the clean-up which has been ordered verbally "on numerous occasions and in writing in 1980." Gashlin's memo indicates Fred Sickels is now DEP's inspector on the site.

May 1, 1984

CSD contractor writes to NJDEP indicating their "presence on site during the initial drilling is essential."

October 9, 1984

Internal DEP memo from \_\_\_\_\_ to \_\_\_\_\_ indicating CSD had wells installed in the spring of 1984 and that the company is probably waiting for NJDEP to take action before it samples.

November 21, 1984

NJDEP inspector watches sampling.

March 14, 1984

Analysis of sampling with chain of custody documents transmitted from NJDEP regional office to NJDEP counsel indicating five of the eight wells had locks different than the original locks and describing methodology used in analysis of samples.

June 3, 1985

Memo from NJDEP regional office to NJDEP counsel detailing conclusions of sampling and indicating presence of hazardous waste. Memo recommends a second round of sampling.

August 6, 1985

Continuation of analysis and recommendations based on sampling by NJDEP.

Later part of 1985

*Evidences*

Memo from \_\_\_\_\_ to \_\_\_\_\_  
within NJDEP evidences confusion as to who  
has lead on action with CSD.

January 22, 1986

Soil samples result indicating \_\_\_\_\_.

1986

NEIC<sup>?</sup> evaluates site and finds it to not  
be high enough on mitre to be placed on list,  
in part, due to the inapplicability of various  
ratings because the site is regulated under  
RCRA.

1987

NJDEP becomes involved in investigating  
Clean Air Act violations.

1988

NJDEP is drafting Clean Air Act Consent  
Agreement by which CSD will consent to  
modifying its incinerator in order to  
comply with the Act.

March 25, 1988

NJDEP inspects and finds poor housekeeping,  
but states site is very different than in  
the early 1980s. Company shows inspector  
sampling results which indicate the ash is  
nonhazardous and company indicated they try  
to bring in drums which don't contain hazard-  
ous waste and that they are trying to clean up  
contaminated soils from past operations.

June - 1988

EPA's Edison office performs a sampling of  
the company's facility.

August - 1988

Edison's office indicates results of sampling  
indicate presence of hazardous waste and PCB  
disposal.

September - 1988

EPA performs inspections of CSD.

September - 1988

Inspection Report indicating CSD  
is in violation of RCRA.VI. INJUNCTIVE RELIEF

Pursuant to section 3008(a)(g) of RCRA, 42 U.S.C. § 6928(a)(g)  
 ✓ the violations of N.J.A.C. 7:26-1, et seq, subject Central Steel Drums,  
 ✓ <sup>inc. to</sup> injunctive relief and the imposition of civil penalties ~~of~~ not more  
 than 25,000 per day. Due to CSD's enforcement history, violations  
 of the CA/CO and present violations it is believed that CSD will  
 ✓ continue to violate TSCA, RCRA and N.J.A.C. 7:26-1 et seq unless  
 enjoined by court Order.

The purpose of this litigation will be to enjoin the company  
 ✓ from operating a hazardous waste facility without a permit and without  
 interim status until such time that the company obtains interim  
 status and compliance with the <sup>r</sup>ules and regulations promulgated  
 pursuant to RCRA and compliance with the New Jersey Solid Waste  
 Regulations.

Further, the purpose of this litigation will be to insure  
 ✓ CSD furnishes financial insurance and ~~insurance and~~ to insure the  
 ✓ proper disposal of all materials including <sup>dur</sup>soils which have been  
 contaminated with PCBs at concentrations of greater than 50 ppm  
 or contaminated with materials presently land banned or contaminated  
 with hazardous materials discovered <sup>dur</sup>during the course of the sampling  
 Ordered under the CA/CO and discovered by any groundwater monitoring  
 required under that Order.

VII. PENALTIES

✓ Pursuant to section 3008(g) of RCRA, 42 U.S.C. § 6928(g), the United States Government seeks the imposition of civil penalties of not more than \$25,000 a day.

*a spot  
ding TP.* ~~[In an administrative action against CSD the penalty proposed  
would be \$ . Withie should spell out and give justifications?]~~

VIII. MAJOR ISSUES*not true*

(a)

~~this case~~ CSD Inc. is ~~simply~~ a hazardous waste facility operating without a permit or interim status in contravention of RCRA and the New Jersey Solid Waste Regulations <sup>in violation of an ~~an~~ administrative Consent Agreement.</sup> In addition CSD <sup>has</sup> disposed of PCBs in violation of TSCA.

*Anticipated defenses:*

*TP* Sampling, monitoring and ~~insuring~~

✓ Cleanup or proper closure of this facility may place the company in a position in which it is forced to file for bankruptcy. The company's assets are not listed on the ~~pick up from p.12 and add.~~

✓ Dun & Bradstreet Report, but proper sampling and clean-up or closure may be costly enough as to be impossible for the company to execute.

It is anticipated that the company will argue its who<sup>le</sup> operation falls under the "empty drum" definition.

CSD <sup>has</sup> stated that it only accepts "empty" drums, <sup>Empty drums</sup> which are defined at 40 C.F.R. 261.7 and N.J.A.C. 7:26-8.4 as drums which contain less than 2.5 c (one inch) of hazardous material. Prior to the 1983 Consent Agreement and Consent Order, EPA inspectors found full and partially full drums were being received by the facility. During <sup>1984 and 1989</sup> ~~a recent~~ inspection ~~no~~ full or partially full drums were found collected at one location. ~~QED~~ A company representative stated that these drums had been accepted by mistake and would be returned. No manifests were found which indicated such transport.

**IX. SIGNIFIGANCE OF REFERRAL**

The primary justification of this referral is to seek compliance with the previous CA/CO and compliance with RCRA including the land ban regulations and compliance with the New Jersey Solid Waste Regulations and compliance with the TSCA requirements for the disposal of PCBs.

**X. LITIGATION STRATEGY**

(a) Central Steel Drum's counsel may attempt to negotiate, but settlement at this point is probably inadvisable due to the company's past history of noncompliance.

(b) Interrogatories or requests for admissions may be necessary to establish the company's financial status, and to obtain all documents pertaining to sampling performed by the facility.

(c) The potential for summary judgement [let's discuss]

(d) It would be difficult to prove the need for a preliminary injunction requiring Central Steel Drum to cease operation of its facility may be contemplated because of the extended delay in bringing the litigation. If we should choose to go this route we would have to satisfy the four prong test for ....

(e) Potential witnesses for EPAs case may be Sam Ezequo, Jim Sanderson, John Wilk (fill in titles), Charles Anderson,

In addition, it would probably be advisable to request NJDEP employees, Kenneth Gashlin and Fred Sickels. We may have problems with the present NJDEP inspector who thinks the site is just an example of poor housekeeping. Although, at the time he stated this he was taking CSD's word on the question of whether or not they were generating, treating, storing, or disposing of a hazardous waste.

(f) All sampling results as well as prior CACO documents generated in the course of attempted compliance with that CACO will provide support for the claims in the Complaint issued to Central Steel Drum, Inc.

(g) In response to the allegations of violations of paragraph 7 of the Consent Order, it is anticipated that CSD, Inc will attempt to prove that New Jersey Department of Environmental Protection did not provide the necessary guidance for the company to move forward.

Documentation listed in the enforcement history section of this referral (copies of which are attached) can be used to show that activities surrounding the company's compliance with paragraph 7 of the CACO broke down because the company did not submit additional sampling and remedial plans for approval by NJDEP.

In the past, CSD has argued that it did not receive hazardous waste because the drums it received contained less than one inch of hazardous waste. ~~At the 1989 EPA inspectors, facility personnel proudly boasted they did not process drums which were not empty.~~ Even if CSD received only "empty drums" the company generates a sludge which contains great enough concentrations of hazardous materials for the sludge to be defined as hazardous waste, treats and stores this hazardous waste and stores the resultant ash which contains great enough concentrations of hazardous materials for the ash to be defined as hazardous waste. In addition, the company has a waste pile on the facility which contains concentrations

In 1980, EPA indicated in a preamble to the empty drum rule that EPA was conducting further study on hazardous waste and had to regulate drum refurbishing.

① because of the significant quantities of residue accumulation and disposal at drum refurbishing operations it was proposed option for regulation of such industry. In 1982, the rule was finalized and in the preamble to that rule, EPA indicated that while one of the

Table  
Specimens had 25

over -  
whenever  
Duffport  
amongst  
Comm. = for

40 C.F.R.  
270

①



26  
27  
of PCBs at concentrations greater than 50 ppm.

④  
7  
The facility has taken some samples, the results of which did not indicate the presence of hazardous <sup>material</sup> waste and some samples, the results of which did indicate the presence of hazardous <sup>material</sup> waste. It is probable that they will assert lack of knowledge as to the presence of hazardous <sup>material</sup> waste. This can easily be countered with various results of the sampling done by the company pursuant to the CACO, and by the results of some sampling done by the company recently.

③  
operations. Since that time EPA has promulgated no regulations with <sup>in</sup> that regard. <sup>RCRA</sup>  
~~Unfortunately, EPA, therefore has no authority over the facility if it does not treat or store or dispose of~~  
If CSD did not treat, store or dispose of any drums which contained more than 1" of residue, CSD would be outside the ambit of RCRA. CSD, however, <sup>otherwise,</sup> does store ~~and~~ drums which contain more than 1" of residue. Since no manifests are kept with regard to their supposed treatment it is possible these drums are treated at the facility as well. During the process of treating these drums (refurbishing them) waste is generated and this waste is improperly disposed of